

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

November 14, 2014

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

KAUAI

Approval in Principle to Kauai Island Utility Cooperative (“KIUC”) for:

- 1) Issuance of Direct Lease over Puu Lua Reservoir for Water Storage Purposes, at Waimea, Kauai, Tax Map Key (4) 1-4-001:002 (por.);
- 2) Issuance of Pipeline Easement for Waterline Transmission Purposes, at Waimea, Kauai, Tax Map Keys (4) 1-4-001:002 (por.), 1-4-001:014 (por.) and 1-2-001:006 (por.); and
- 3) Issuance of Direct Lease of Water Rights

Approval of the Issuance of an Immediate Right of Entry to KIUC for Site Assessment Purposes, Tax Map Keys (4) 1-4-001:002 , 1-4-001:014 and 1-2-001:006.

APPLICANT

Kauai Island Utility Cooperative (“KIUC”), whose mailing address is 4463 Pahee Street, Suite 1, Lihue, Hawaii 96766.

LEGAL REFERENCE

Sections 171-13, 171-17, 171-58 and 171-95, Hawaii Revised Statutes,

LOCATION

Waimea, Kauai

AREA

To be determined

ZONING

All of the parcels are in the Conservation District.

## TRUST LAND STATUS

All parcels are Section 5(b) lands of the Hawaiian Admission Act.

## CURRENT USE STATUS

- (4) 1-2-001:006: Encumbered by GL No.'s 5184 and 3952 to the U.S. Department of the Navy, EO 3241 to the DLNR Division of Forestry and Wildlife and EO 3243 to the DLNR Division of State Parks.
- (4) 1-4-001:002: Encumbered by EO 4287 to Agribusiness Development Corporation, EO 2209 to the DLNR Division of State Parks.
- (4) 1-4-001:014: Encumbered EO 3243 to the DLNR Division of State Parks and RP 6782 to Richard Haviland.

## LEASE TERM

Sixty-five (65) years.

## COMMENCEMENT DATE

To be determined by the Chairperson.

## ANNUAL RENT AND REOPENINGS

To be determined by the Board upon the final approval stage.

## IMPROVEMENT & PERFORMANCE BOND

To be determined by the Board upon the final approval stage.

## CHAPTER 343 REQUIREMENTS

### Direct Issuance of Lease, Lease of Water Rights and Easements

Upon approval of the subject request, the applicant will commence an environmental impact statement pursuant to Chapter 343, HRS. The outcome of the assessment process will be reported to the Board before final approval of the lease is requested.

### Right-of-Entry for Site Assessment Purposes

A right-of-entry permit is proposed for the applicant to undertake any site investigation, which may include, but not be limited to, evaluating the Puu Lua Reservoir, its condition, and the surrounding lands; and inspecting and surveying State lands along a corridor through State conservation lands from the Puu Lua Reservoir to the seaward Kekaha flat lands.

In accordance with Hawaii Administrative Rules Sections 11-200-8(a)(1), (4) and (5), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing"; Exemption Class No. 4 that states "Minor alterations in the conditions of land, water, or vegetation"; and Exemption Class No. 5 that states "Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource". An Exemption Notification is attached.

#### DCCA VERIFICATION

|   |     |
|---|-----|
| Place of business registration confirmed: | Yes |
| Registered business name confirmed:       | Yes |
| Applicant in good standing confirmed:     | Yes |

#### APPLICANT REQUIREMENTS

None at the time of writing this submittal, however, final approval shall be subject to Applicant fulfilling all requirements contained in this submittal and incorporated by reference into the approval in principle.

#### REMARKS

KIUC seeks approval in principle from the Board for several dispositions for the purpose of providing water for the West Kauai Storage Project ("Project"). The Project is a pumped hydroelectric project that is located on the west side of Kauai on the Waimea Ridge approximately eight miles north of the town of Kekaha and ten and a half miles north-northwest of the town of Waimea. The Project footprint spans unencumbered lands under management of the Division, as well as lands set aside to the Agribusiness Development Corporation ("ADC"). The dispositions sought by the KIUC are as follows:

- 1) Direct lease for the portion of the parcel identified as Tax Map Key (4) 1-4-001:002, consisting of the Puu Lua Reservoir;
- 2) Pipeline easements for water transmission purposes across parcels identified as Tax Map Keys (4) 1-4-001:002 (por.), 1-4-001:014 (por.) and 1-2-001:006 (por.); and
- 3) Direct lease of water rights.

The Board is requested to grant approval in principle of the dispositions in order to allow the Department to commence negotiations with KIUC, and to allow KIUC to begin due diligence and addressing statutory and regulatory requirements prior to seeking final approval from the Board.

The proposed Project intends to utilize water sourced from the existing Puu Lua Reservoir, fed by the Kokee Ditch System. The water will be transmitted from the Puu Lua Reservoir through a pipeline located on Parcels (4) 1-4-001:002 and 014, and 1-2-001:006 to a newly constructed pumped hydro facility with a pumping capacity of approximately 25 megawatts and a generation capacity of approximately 20 megawatts located on land set aside to ADC, specifically parcel (4) 1-2-001:001 (por.). KIUC intends to also construct a new 30MG reservoir and substation adjacent to the facility. The Project includes the rehabilitation of the Puu Lua Reservoir including the bypass ditch and the existing outlet gate that currently provided irrigation for downstream uses. The construction of a new outlet structure is proposed to supply water for the Project. The Project will be operated as a closed loop system with make-up water being drawn from the Kokee Ditch System. A map illustrating the scope of the Project, including the affected parcels, is attached as Exhibit A.

The entire irrigation system, that includes the Puu Lua Reservoir and the Kokee Ditch System, was previously under the management of the Kekaha Sugar Company, under General Lease S-4222. Upon the closure of Kekaha Sugar in 2001, the management of the irrigation system reverted back to the Department. After a series of revocable permits to a number of entities including ADC, the Department sought approval from the Board to set the irrigation system aside to ADC, at their request. At its meeting on December 9, 2005, under Agenda Item D-2, the Board approved the set aside of the irrigation system to ADC. The purpose of the set aside was to allow ADC the flexibility to manage and operate the irrigation system for the agricultural community, hydro-electric power generation plants, and other common infrastructure that was traditionally managed by the former Kekaha Sugar Company.

The irrigation system was set aside to ADC on August 18, 2009, with the signing of Executive Order 4287. The intent of the set aside was to transfer the entire irrigation system, including the Puu Lua Reservoir and the Kokee Ditch System to ADC, but an error resulted in the Reservoir being excluded from the metes and bounds description of the set aside. At its meeting on April 8, 2011, under Agenda Item D-8, the Board approved a request to authorize the Chairperson to enter into a Memorandum of Understanding (MOU) between DLNR and ADC to grant ADC the authority to control and manage the Reservoir as originally intended<sup>1</sup>. The relevant Board submittals are attached as Exhibit B. In 2011, ADC entered into a License Agreement with Pacific Light and Power, Inc. (PLP). According to the license agreement, PLP desires to develop a conduit hydroelectric project and biogas project on lands licensed from ADC. As with the KIUC project, the hydroelectric component intends to utilize water from the Kokee Ditch System. Although the set aside provides ADC the ability to issue dispositions for hydro power projects, Land Division staff is assisting on this Project due to their experience with leases of water rights.

As of the writing of this submittal, ADC has yet to approve any dispositions to KIUC for the Project. In addition, as it is unclear whether the Project will impact ADC's pre-existing agreements, ADC should be accorded the deference to determine whether the existing resources can accommodate both proposed hydroelectric projects. Therefore, staff recommends that the Board require KIUC to obtain approval for dispositions from ADC prior to granting final approval for any disposition from the Department in relation to the Project. Furthermore, the

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<sup>1</sup> For various reasons beyond the scope of this submittal, the MOU with ADC was not executed.

parcels under this request are subject to additional set asides and encumbrances. If it is determined that any of the requested dispositions impact the set asides or encumbrances, KIUC shall be required to consult with the affected parties and obtain any necessary approvals prior to seeking final approval from the Board.

Pursuant to HRS Section 171-95, KIUC seeks a direct lease for the portion of the parcel identified as Tax Map Key (4) 1-4-001:002, consisting of the Puu Lua Reservoir. As part of the Project, KIUC will fully rehabilitate the Puu Lua Reservoir to be in compliance with dam safety regulations. In addition, the rehabilitation will restore the reservoir's storage capacity to its historic levels of 250MG, whereas its current operating capacity is between 35MG to 55MG. KIUC also seeks a pipeline easement in order to transmit the water from the Puu Lua Reservoir to the Haeleele Reservoir, pumphouse and transmission station located on land managed by ADC. The buried steel pipeline will be 48 inches in diameter and 25,000 feet in length. As all of the proposed improvements on DLNR land are located in the Conservation District, KIUC is required to obtain all necessary approvals from the Office of Conservation and Coastal Lands, including but not limited to Conservation District Use Permits, as well as comply with all other regulatory requirement, such as subdivision.

In order to use the water from the Puu Lua Reservoir, KIUC is required to obtain a water lease, pursuant to the requirements of HRS Section 171-58, which provides that after a certain land or water use has been authorized by the Board subsequent to public hearings and conservation district use application and environmental impact statement approvals, water used in nonpolluting ways, for non-consumptive purposes because it is returned to the same stream or other body of water from which it was drawn, essentially not affecting the volume and quality of water or biota in the stream or other body of water, may also be leased by the Board with prior approval of the Governor and the prior authorization of the Legislature by concurrent resolution. In regards to the lease of water rights, the Board is requested to grant an approval in principle for the lease, so that KIUC may commence with addressing the statutory requirements. In addition to the statutory requirements, the Board is recommended to require KIUC to obtain ADC's consent for the lease of water rights, as they are a sister agency with an interest in the water rights<sup>2</sup>. After the fulfilling the requirements, KIUC will return to Board to seek final approval for the lease of water rights, as well as the other dispositions in this request.

In addition to the approvals in principle, KIUC is also requesting a right of entry to conduct geo-tech fieldwork including test pits, soil sampling and borings. KIUC (or its contractors) shall be responsible for restoring all sampling areas and no hazardous materials will be used. KIUC asserts that the studies will be non-invasive and will include archaeological and cultural resource surveys, flora and fauna surveys, and any additional surveys that may be required if endangered species are identified in the Project footprint.

As this request is for an approval in principle, only ADC and OCCL were solicited for comments. ADC's comments are attached as Exhibit C. Public comment will also be solicited through the environmental review process. In addition, public meetings are also required for the

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<sup>2</sup> Despite the set aside, the Board retains jurisdiction of the water resource, as terms of the EO does not appear to grant water rights from the irrigation system exclusively to ADC.

lease of water rights, additional hearings may be held pursuant to regulatory approvals such as the CDUP.

RECOMMENDATION: That the Board

- A. Approve in principle the issuance of a direct lease to KIUC subject to the terms and conditions described cited above which are by this reference incorporated herein, provided that the details of the proposed disposition shall be submitted to the Board for final approval prior to documentation.
- B. Approve in principle the issuance of a pipeline easement for water transmission purposes to KIUC subject to the terms and conditions described cited above which are by this reference incorporated herein, provided that the details of the proposed disposition shall be submitted to the Board for final approval prior to documentation.
- C. Approve in principle the issuance of a direct lease of water rights to KIUC subject to the terms and conditions described cited above which are by this reference incorporated herein, provided that the details of the proposed disposition shall be submitted to the Board for final approval prior to documentation.
- D. Authorize the Chairperson to prescribe other terms and conditions as may be necessary to carry out the intent of the Board and best serve the interests of the State.
- E. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS and Chapter 11-200, HAR, the requested right-of-entry will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
- F. Authorize the issuance of a right-of-entry permit to KIUC covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current right of entry permit form, as may be amended from time to time; and
  - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted



Ian Hirokawa  
Special Projects Coordinator

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink, appearing to read "W. Aila, Jr.", is written over a horizontal line.

William J. Aila, Jr.  
Chairperson

A blue handwritten mark, possibly a stylized signature or initials, consisting of a series of connected loops.

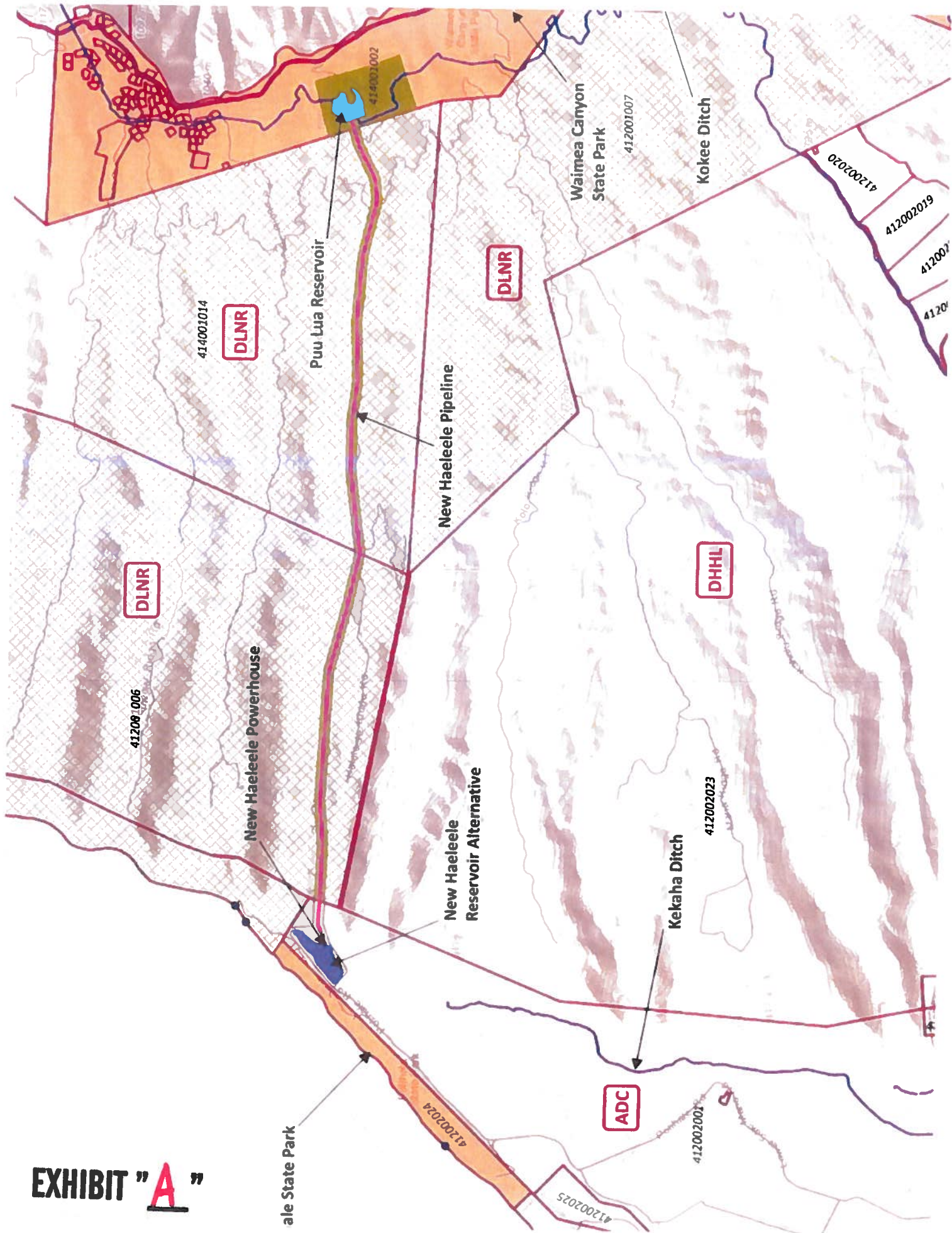


EXHIBIT "A"

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

April 8, 2011

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Kauai

Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate Terms and Conditions and Sign a Memorandum of Understanding between the Department and the Agribusiness Development Corporation, regarding the Puu Lua Reservoir; TMK No. (4) 1-4-001:002 (portion)

Applicant:

The Department of Land and Natural Resources (Department), Land Division

Legal Reference:

Section 171-6, Hawaii Revised Statutes, as amended

Location:

The Puu Lua Reservoir is situated on TMK No. (4) 1-4-001:002 (por.) owned by the State of Hawaii, as shown on the attached map labeled Exhibit A

Background:

At its meeting of December 9, 2005, under agenda item D-2 (Exhibit B) the Board of Land and Natural Resources ("Board") approved to recommend to the Governor, a set aside to Agribusiness Development Corporation ("ADC") for irrigation system and Waimea (Mauka) hydro-electric power generation plant purposes at Waimea, Kauai, TMK Nos. (4) 1-2-1; various, 1-2-2:various; 1-4-1:various, and 1-5-1:various. The Board further amended its approval by adding as a condition that ADC work cooperative with the Division of State Parks to assure that ADC's management and control of the irrigation system does not adversely affect Kokee State Park or its tenants.

On August 18, 2009, Governor's Executive Order 4287 (Exhibit C) was issued setting aside for the public purpose, the irrigation system, including the land underneath the water and the taking of water to be under the control of the ADC. Although the Puu Lua Reservoir ("Reservoir") is not included in the EO, the ADC took the initiative to plan for remediation and improvements to the Structure, upon receipt and review of the Final Phase I Visual Inspection Report (February 2009).

APPROVED BY BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

*April 8, 2011*

**EXHIBIT "B"**

D-8

Although the title to the land beneath the Reservoir remains with the Department, this MOU is to confirm and clarify that the ADC, on behalf of the Department, shall control and manage the Reservoir and assume responsibility for complying with all regulatory requirements of the State's Dam Safety program, until such time when the EO is amended or replaced with a new EO to include that Reservoir. The MOU further clarifies that the control and management include the improvements, maintenance and operations of the Reservoir. Attached is a draft of the MOU (Exhibit D).

Recommendation that the Board:

Authorize the Chairperson to negotiate terms and conditions and sign on behalf of the Department and the Board of Land and Natural Resources a Memorandum of Understanding between the Board and the Agribusiness Development Corporation, subject to review and approval as to form by the Department of the Attorney General.

Respectfully Submitted,

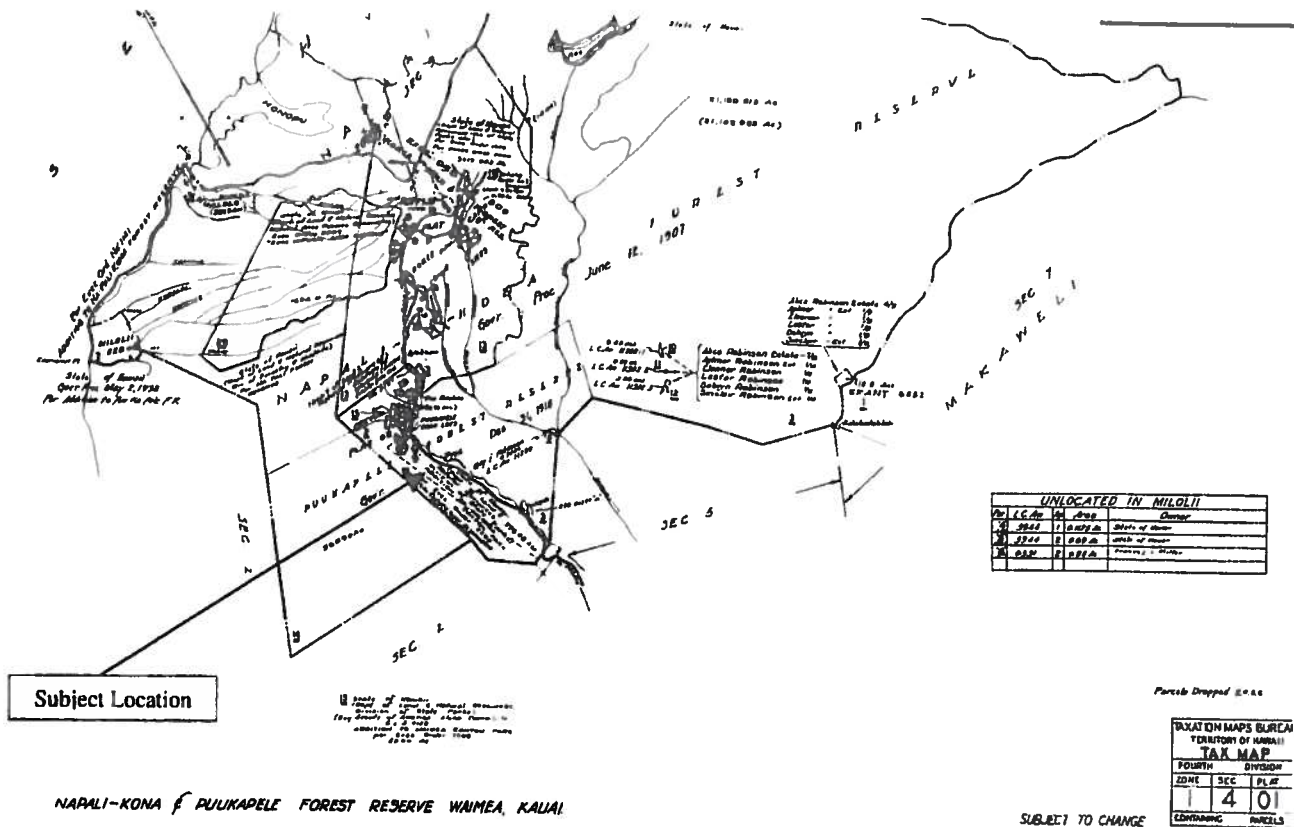
  
Morris M. Atta  
Special Projects Coordinator

APPROVED FOR SUBMITTAL:

  
William J. Aila, Jr.; Chairperson

Attachments

**Location of Puu Lua Reservoir  
TMK No. (4) 1-4-001:002(portion)**



**EXHIBIT "A"**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

AMENDED

December 9, 2005

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 05KD-234

KAUAI

Set Aside to Agribusiness Development Corporation for  
Irrigation System and Waimea (Mauka) Hydro-Electric Power  
Generation Plant Purposes, Kekaha and Waimea Valley  
including Hawaiian Home Lands, Kauai, Tax Map Keys: (4) 1-2-  
1:various; 1-2-2:various; 1-4-1:various; and 1-5-1:various.

APPLICANT:

Agribusiness Development Corporation (ADC)

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Kekaha and Waimea Valley situated  
at Waimea, Kauai, identified by Tax Map Keys: (4) 1-2-1:various;  
1-2-2:various; 1-4-1:various; and 1-5-1:various, as shown on the  
attached map labeled Exhibit A.

AREA:

Various.

ZONING:

State Land Use District: Agriculture  
County of Kauai CZO: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES x NO       

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-7252, Controlled Environment  
*as amended*

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

*December 9, 2005*

EXHIBIT "B" D-2

Aquaculture Technology, Inc. (CEATECH); Syngenta Seeds, Inc.; Pioneer Hi-Bred International, Inc.; Gay & Robinson, Inc.; Wally Johnson, Permittee, for operation and maintenance of a portion of an existing water transportation system; and taking water from within the Kokee and Kekaha Ditches purposes. Note: Based on U.S. Bankruptcy Court ruling the Land Board on July 22, 2005, under agenda Item D-2, consented to the assignment of CEATECH's interest to Sunrise Capital, LLC or its designee.

Encumbered by Revocable Permit No. S-7359, Agribusiness Development Corporation for hydro-electric power generation and structures purposes.

PURPOSE:

Irrigation system and Waimea (Mauka) hydro-electric power generation plant purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

None

BACKGROUND:

In 2001, AMFAC closed Kekaha Sugar Company (General Lease No. S-4222), ending nearly 100 years of sugar cultivation on some 28,000 acres of State and Hawaiian Home Lands at West Kauai. In anticipation of the closure, at its meeting of October 27, 2000, under agenda item D-29, the Board authorized the issuance of five (5) revocable permits to: Syngenta Seeds (corn seed), Pioneer Hi-Bred International (corn seed), Wally Johnson (diversified farming), Controlled Environment Aquaculture Technology (aquaculture), and Gay & Robinson (sugar). In a separate action, under agenda item D-30, the Board authorized the issuance of a revocable permit for the operation and maintenance of a portion of an existing water transportation infrastructure system and to take water from within the existing Kokee Ditch and Waimea Ditch. Permit rent for the first six months was waived to allow the users an opportunity to move onto the property, form a cooperative, and undertake the critical maintenance of important infrastructure. For the irrigation system, Revocable Permit No. S-7252 was executed on April 23, 2003. When the permits were originally issued, it was the intention of the permittees to quickly form a cooperative that would

then apply for a direct lease covering the property. The co-op was to then sublease to users and manage the water system supported by funds provided by members of the co-op.

At its meeting of October 6, 2001, under agenda item D-11, the Land Board tabled the idea of having the co-op apply for the master lease and authorized the issuance of a direct lease and a revocable permit to ADC. Staff had prepared several versions of a lease and revocable permit with ADC, although none have been acceptable to the ADC Board. In meetings with ADC and the Departments staff, it had been determined that issuance of a set aside to ADC is preferred over a long-term lease and better achieves the purposes of both entities. The set aside would allow ADC complete management responsibility without the requirement of returning to the Land Board for various operational and management issues. Once the set aside is finalized, the ADC would enter into leases with the existing revocable permit holders and facilitate others who desire to occupy portions of State lands.

Kekaha Sugar generated power for its operations at the Mauka Hydro located at the bottom of Waimea Canyon. For some unknown reason, the hydro site was not under any lease or permit. The Mauka Hydro is necessary for the economic operation of the electrical systems that provide power to the current revocable permit holders on the Kekaha lands and for the operation of the pumps that dewater the Mana plain. ADC had made significant improvements to the Mauka Hydro over the past few years with the aid of funding from the U.S. Navy Pacific Mille Range Facility. Continued use and operation of the Mauka Hydro is required for the effective management of the Kekaha lands to be set aside to ADC. ADC had entered into a Purchase Power Agreement with Kauai Island Utilities Cooperative (KIUC) where the parties have agreed to make deliveries of energy to each other and in emergency situations. About two-thirds of the energy delivered by ADC is generated at the Mauka Hydro.

At its meeting of July 11, 2003, under agenda item D-10, the Land Board approved to recommend to the Governor a set aside to ADC and the issuance of a revocable permit to ADC for the Mauka Hydro. Revocable Permit No. S-7359 was executed on January 7, 2004. The Acting Governor signed Executive Order No. 4007 on September 16, 2003.

REMARKS:

The Waiawa hydroelectric power plant and portions of the irrigation system (or ditch) is within Governor's Executive Order No. 4007. Other sections and the Waimea (Mauka) hydro-electric power generation plant is outside Governor's Executive Order No. 4007. The irrigation system (or ditch) originates from Puu Ka Pele Forest Reserve and the Napali-Kona Forest Reserve then runs through the Department of Hawaiian Home Lands and finally to Governor's Executive Order No. 4007.

This request is to address only the irrigation system (or ditch) including the land underneath the water and the taking of the water. ADC is requesting the Land Board's favorable consideration for the set aside. The set aside will allow ADC flexibility in managing and operating the irrigation system (ditch) for the agricultural community, the hydro-electric power generator plants, and other common infrastructure that were traditionally managed by the former Kekaha Sugar Company.

Currently, ADC along with its tenants and contractors are managing the irrigation system and the Mauka Hydro. There is no alternative agency to manage the irrigation system (or ditch) or the Mauka Hydro for the West side of Kauai.

Comments were solicited and their statements are listed below:

|                                |   |
|--------------------------------|---|
| County of Kauai, Planning      | No response                             |
| County of Kauai, Public Works  | No comments                             |
| County of Kauai, Dept of Water | No comments                             |
| DHHL                           | No response                             |
| DLNR Aquatic Resources         | No response                             |
| DLNR Forestry & Wildlife       | No response                             |
| DLNR Historic Preservation     | No historic properties will be affected |
| DLNR State Parks               | Comments attached as Exhibit B          |
| DLNR Water Resource Management | No objections                           |
| DOA                            | No response                             |
| US Dept of Navy                | No response                             |
| NRCS                           | No response                             |
| OHA                            | No response                             |

Copies of comments received were forwarded to ADC. Staff reviewed Governor's Executive Order Nos. 1509, 1510, 2197, and 2209. All streams, water ways and water systems, springs, wells and reservoirs, and all riparian and other rights appurtenant to the land were excluded from the park and forest reserves. Land Division lacks the expertise to manage former sugar plantation irrigation systems and their infrastructures (ie. Hamakua, Kau, Kalepa). It is unlikely Division of State Parks has that expertise. There are only two (2) agencies excluding the County's Water Department, and they are the Department of Agriculture (DOA) and ADC capable of managing former sugar plantation irrigation systems and their infrastructures. DOA has expressed no interest. ADC has agreed to open dialog with Division of State Parks staff on Kauai to iron out any misunderstandings.

This intricate system (from the mountain to the sea) needs to be maintained to lessen flood threats to Kekaha town, the Pacific Missile Range Facility, ADC's agricultural tenants, Polihale State Park, Waimea Valley taro farmers, etc.

The set aside staff is requesting does not allow ADC to sell the State-owned improvements, the land underneath the water, and the water. It is only for ADC's jurisdiction control and management.

The existing Revocable Permit No. S-7252 and S-7359 will be terminated upon issuance of the set aside.

RECOMMENDATION:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Agribusiness Development Corporation under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

*Charlene E. Unoki*

but Charlene E. Unoki  
Assistant Administrator

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson

APPROVED AS AMENDED. The Board amended staff's recommendation by adding as a condition, the Set Aside to Agribusiness Development Corporation ("ADC"), that ADC work cooperatively with the Division of State Parks, DLNR, to assure that ADC's management and control of the irrigation system do not adversely affect the Kokee State Park or the Lessees at Kokee State Park.



# KOKEE AND KEKAHA DITCHES

Waimea, (Kona) Kauai, Hawaii.

Scale: 1 inch = 4000 feet

NOTE: 2.5 miles of the original (1900) 1:25,000 scale of Kokee and Kekaha Ditches (1900) and 15.0 miles of the original (1900) 1:25,000 scale of Kokee and Kekaha Ditches (1900)

NOTE: Redwood from U.S. Geological Survey Quadrangle (Monograph) maps. July 1900. 1:25,000

TAX MAP KEY: 1-2-01, 1-3-02, 1-4-01, 1-5-01

1900, 1:25,000 scale map  
H.B.S. PLAT 3

EXHIBIT "A"

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF STATE PARKS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

November 9, 2005

MEMORANDUM

To: Charlene Unoki, District Land Agent  
Land Division

From: Daniel S. Quinn, Administrator *dsquinn*  
Division of State Parks

Subject: Set Aside for Irrigation System and Hydroelectric Power Generation Plant,  
Waimea, Kaua'i

We have reviewed the proposed set aside of land to Agribusiness Development Corporation (ADC) and prefer that the disposition for the Kōke'e irrigation system be by a long-term lease. We are strongly opposed to the withdrawal of park lands within Kōke'e and Waimea Canyon State Parks and the subsequent setting aside of those park lands to the Agribusiness Development Corporation (ADC).

While the proposed set aside would "allow ADC complete management responsibility without the requirement of returning to the Land Board for various operational and management issues", we believe that it would be at the expense of park values (for example, "wilderness", scenic, and biological) and public recreational use.

In addition, this proposed action would partition the parks and require State Parks to obtain a lease and/or easements for existing and future park uses over the lands set aside to ADC. It should also be noted that Kōke'e Ditch tunnels under the State highway and several recreation residences.

If you have questions, or need additional information, please contact Wayne Souza, Kaua'i Parks District Superintendent at 4-3446 or by email.

c: Wayne Souza

EXHIBIT "B"

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL  
RESOURCES  
COMMISSIONER OF LAND AND NATURAL  
RESOURCES  
DEPUTY DIRECTOR - LAND  
DIVISION

DEAN HAKLAND  
DEPUTY DIRECTOR - WATER  
DIVISION

2005 NOV 14 P 3:13

RECEIVED  
LAND DIVISION  
NATURAL RESOURCES  
STATE OF HAWAII

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCES  
CONSERVATION AND COASTAL LANDS  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE  
COMMISSION  
LAND  
STATE PARKS

LAND COURT SYSTEM ( ) REGULAR SYSTEM ( )  
 Return by Mail ( ) Pickup ( ) To: \_\_\_\_\_

Total Number of Pages:

Tax Map Key Nos. (4) 1-2-001:various;  
1-2-002:various; 1-4-001:various;  
and 1-5-001:various

FROM: STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

TO: AGRIBUSINESS DEVELOPMENT CORPORATION,  
a public body corporate and politic and an  
instrumentality and agency of the State of  
Hawaii  
235 S. Beretania Street, Suite 205  
Honolulu, Hawaii 96813

EXECUTIVE ORDER NO. 4287

## SETTING ASIDE LAND FOR PUBLIC PURPOSES

BY THIS EXECUTIVE ORDER, I, the undersigned, Governor of the State of Hawaii, by virtue of the authority in me vested by Section 171-11, Hawaii Revised Statutes, and every other authority me hereunto enabling, do hereby order that the public land hereinafter described be, and the same is, hereby set aside for the following public purposes:

FOR IRRIGATION SYSTEM, INCLUDING THE LAND UNDERNEATH THE WATER AND THE TAKING OF WATER, to be under the control and management of the Agribusiness Development Corporation, a public body corporate and politic and an instrumentality and agency of the State of Hawaii, covering parcels of land situate at Waimea (Kona), Kauai, Hawaii, identified as "Kokee and Kehaha Ditches," consisting of the Kokee (Main) Ditch, containing an area of 14.6 miles, more or less, and the Kokee Ditch (West Branch), containing an area of 1.5 miles, more or less, with a total length of 16.1 miles, more or less, and Kekaha Ditch, with a total length of 9.6 miles, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 15,669 and dated October 24, 1968, and survey map designated H.S.S. Plat 3087-B.

SUBJECT, HOWEVER, to the condition that upon cancellation of this executive order or in the event of non-use or abandonment of the premises or any portion thereof for a continuous period of one (1) year, or for any reason whatsoever, the Agribusiness Development Corporation, a public body corporate and politic and an instrumentality and agency of the State of Hawaii shall, within a reasonable time, restore the premises to a condition satisfactory and acceptable to the Department of Land and Natural Resources, State of Hawaii.

SUBJECT, FURTHER, to disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.

This executive order does not authorize the recipient of the set aside to sell or exchange or otherwise relinquish the State of Hawaii's title to the subject public land.

IN WITNESS WHEREOF, I have hereunto set my hand and  
caused the Great Seal of the State of Hawaii to be affixed.  
Done at the Capitol at Honolulu this 18<sup>th</sup> day of  
August, 2009.

  
\_\_\_\_\_  
Governor of the State of Hawaii

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General

Dated: April 14, 2009

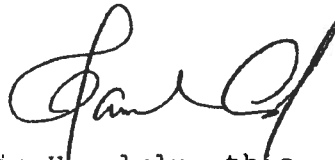
09 AUG 18 AM 1:39  
LIEUTENANT GOVERNOR'S  
OFFICE

STATE OF HAWAII

Office of the Lieutenant Governor

THIS IS TO CERTIFY That the within is a true copy of  
Executive Order No. 4287 setting aside land for public  
purposes, the original of which is on file in this office.

IN TESTIMONY WHEREOF, the Lieutenant  
Governor of the State of Hawaii, has  
hereunto subscribed his name and caused  
the Great Seal of the State to be affixed.



DONE in Honolulu, this \_\_\_\_\_ day of

\_\_\_\_\_, A.D. 200

AUG 18 AM 1:39

LIEUTENANT GOVERNOR'S  
OFFICE



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

October 24, 1968

C.S.F. No. 15,669

KOKEE AND KEKAHA DITCHES

Waimea (Kona), Kauai, Hawaii

*For tracing  
See H.S.S. Plat 3087-B*

Kokee (Main) Ditch: A ditch System of tunnels and open ditches over, across and under the Government (Crown) Land of Waimea, including portions of Napali-Kona Forest Reserve, Kokee State Park, Waimea Canyon State Park and Puu Ka Pele Forest Reserve, said ditch system as shown on Government Survey Registered H.S.S. Plat 3087-B.

Beginning at the Kokee Ditch Intake in Waimea Canyon at an elevation of 3,450 feet (more or less) of the Mohihi Stream, the ditch system traverses northwesterly by tunnel 1.4 miles to Waiakoali Stream at an elevation of 3,400 feet (more or less), the ditch system traverses northwesterly by tunnels, approximately 1.1 miles, crossing Kawaikoi Stream and continuing to Kawaikihana Stream at an elevation of 3,400 feet (more or less); thence in a southwesterly direction by tunnels, approximately 3.0 miles to a crossing at Kokee Stream at an elevation of 3,300 feet (more or less); thence westerly and southerly by tunnel and open ditches, approximately 3.4 miles in length to Puu Lua Reservoir, crossing Halemanu Stream at an elevation of 3,300 feet (more or less); thence from an outlet of Puu Lua Reservoir, southerly by tunnels and open ditches, approximately 3.0 miles to its junction with the West Branch of said Kokee Ditch on the ridge dividing Haleiele and Kukuipuha Valleys; thence southerly by open ditches approximately 2.7 miles to a point where the ditch crosses Kokee Road at an elevation of 2,170 feet (more or less).

EXHIBIT "A"

PRELIM APPR'D  
Department of the  
Attorney General

October 24, 1968

- 2 -

Kokee Ditch (West Branch):

Beginning at its junction with the Kokee (Main) Ditch on the ridge dividing Haleiele and Kukuipuha Valleys, the West Branch runs by open ditches, southwesterly to a point where the ditch crosses the boundary between Puu Ka Pele Forest Reserve and Portion of the Government Land of Waimea (CSF 15,648) for a distance of approximately 1.5 miles at an elevation of 2,600 feet (more or less).

Kokee (Main Ditch) = 14.6 miles (more or less)

Kokee Ditch (West Branch) = 1.5 miles (more or less)

Total Length = 16.1 miles (more or less)

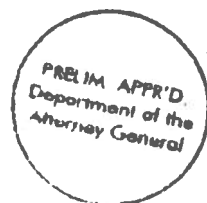
Kekaha Ditch: A ditch system of tunnels, siphons and open ditches over, across and under the Government (Crown) Land of Waimea, including portion of Puu Ka Pele Forest Reserve, said ditch system as shown on Government Survey Registered H.S.S. Plat 3087-B.

Beginning at the dams at Koaie Stream and Waimea River, at an elevation of 800 feet (more or less), the ditch system runs by tunnels, southerly along the west side of Waimea River for a distance of approximately 2.8 miles; thence crossing Waimea River at the Mauka Powerhouse, the system runs southwesterly by tunnels and open ditches along the easterly side of Waimea River, for a distance of approximately 4.4 miles; thence crossing Waimea River by steel Siphon and following along the westerly side of Waimea Canyon, by open ditches and tunnels in a southerly direction to the north boundary of the Ili of Kikiaola for a distance of approximately 2.4 miles.

Total length of Kekaha Ditch = 9.6 miles

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: Akira Taga  
Akira Taga  
Land Surveyor



Compiled from map furn.  
by Kekaha Sugar Co., Ltd.  
and Govt. Survey Records.

ac



REDUCED NOT TO SCALE

EXHIBIT "B"

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
AND  
THE AGRIBUSINESS DEVELOPMENT CORPORATION  
TMK No. (4) 1-4-001:002 (portion)**

This Memorandum of Understanding ("MOU") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, by its Board of Land and Natural Resources ("DLNR") and the AGRIBUSINESS DEVELOPMENT CORPORATION ("ADC"), a public body corporate and politic and an instrumentality and agency of the State of Hawaii, (collectively, the "Parties"), to address certain management concerns relative to the set aside of the irrigation system, including the land underneath the water and the taking of water, in Kekaha, Waimea, Kauai identified as TMK No. (4) 1-4-001:002 (portion).

WHEREAS, at its meeting of December 9, 2005, under agenda item D-2 (Exhibit A), the Board of Land and Natural Resources ("Board") approved to recommend to the Governor, a set aside of lands to the ADC for irrigation system and Waimea (Mauka) hydro-electric power generation plant purposes. The Board further amended its approval by adding a condition that the ADC work cooperatively with DLNR's Division of State Parks ("State Parks") to ensure that ADC's management and control of the irrigation system would not adversely affect the Kokee State Park or the lessees at the Park.

WHEREAS, Governor's Executive Order No. 4287 ("EO") (Exhibit B), dated August 18, 2009, specifically set aside the control and management of the irrigation system described below, to the ADC. The EO conveyed a total of 16.1 miles of an irrigation system of tunnels and open ditches over, across and under the Government (Crown) Land of Waimea, including portions of Napali-Kona Forest Reserve, Kokee State Park, Waimea Canyon State Park and Puu Ka Pele Forest Reserve, said ditch system as shown on Government Survey Registered H.S.S. Plat 3087-B, called the Kokee Main Ditch and Kokee West Branch Ditch, together with the land underneath the water and the right to take water (the "irrigation system").

WHEREAS, the Kokee Main Ditch, included a total of 14.6 miles, more or less, consisting primarily of tunnels and open ditches beginning at the Kokee Ditch Intake in Waimea Canyon of the Mohihi Stream to Waiakoali Stream, crossing Kawaikoa Stream and continuing to Kawaikihana Stream; then, crossing the Kokee Stream to the Puu Lua Reservoir. From the outlet of the Puu Lua Reservoir, the tunnels and open ditches continuing to the West Branch of the Kokee Ditch on the ridge dividing Haleiele and Kukuipuha Valleys.

WHEREAS, the EO excluded Puu Lua Reservoir from the irrigation system. The irrigation system described in the EO ends at the intake of the Puu Lua Reservoir and then continues from the outlet of the Reservoir to the West Branch of the Kokee Ditch. The exclusion of Puu Lua Reservoir from the description of the irrigation system appears to be a drafting oversight. In spite of the exclusion, the Parties agree that the Puu Lua Reservoir is an important and integral part of the irrigation system that should be managed by a single entity to ensure systemic integrity and consistency and efficiency in operations and maintenance.

**EXHIBIT "D"**

WHEREAS, upon receipt of the Final Phase I Investigation Report issued in February 2009 by Kleinfelder West, Inc. and in anticipation of the set aside of the lands and operating under the assumption that the Puu Lua Reservoir was part of the irrigation system, the ADC took the initiative for the remediation and improvements of the Reservoir.

BE IT RESOLVED THAT this MOU is to confirm and clarify that, while the title to the land beneath the Puu Lua Reservoir remains with DLNR, the ADC, on behalf of DLNR, shall control and manage the Puu Lua Reservoir until such time when the EO is amended to include the Reservoir, which control and management shall include the improvements, maintenance and operations of the Reservoir.

BE IT FURTHER RESOLVED THAT State Parks reserves its rights to the water in the Reservoir to support its activities at the Kokee State Park and for its lessees at the Park.

BE IT FURTHER RESOLVED THAT the DLNR and ADC shall work together to amend the EO to include the Puu Lua Reservoir in the irrigation system.

IN WITNESS WHEREOF, the DLNR and the ADC have executed this MOU as of the date first above written.

Approved by the Board of Land and Natural  
Resources at its meeting held on \_\_\_\_\_.

Approved as to Form:

STATE OF HAWAII, BOARD OF LAND  
AND NATURAL RESOURCES

By: \_\_\_\_\_  
Deputy Attorney General

By: \_\_\_\_\_  
Name: William J. Aila, Jr.  
Title: Chairperson

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
Deputy Attorney General

Date: \_\_\_\_\_

AGRIBUSINESS DEVELOPMENT  
CORPORATION

By: \_\_\_\_\_  
Name: Alfredo Lee  
Title: Executive Director

DRAFT

NEIL ABERCROMBIE  
Governor



JAMES J. NAKATANI  
Executive Director

STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION  
235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

October 27, 2014

Mr. Russell Y. Tsuji  
Department of Land and Natural Resources  
Administrator, Land Division  
1151 Punchbowl Street, Room 220  
Honolulu, HI 96813

Re: Kauai Island Utility Cooperative

Dear Mr. Tsuji:

Thank you for keeping the Agribusiness Development Corporation ("ADC") apprised of the status and progress of the Kauai Island Utility Cooperative ("KIUC") energy projects in West Kauai. The ADC has already granted the KIUC the right to enter upon ADC lands to gather information and to adapt energy storage plans and designs, including those for the Puu Lua reservoir project. The KIUC and its consultants have been very responsive to our inquiries, and have been keeping the ADC abreast of the status of their projects as well.

ADC continues its improvements to the irrigation ditches and reservoirs in the area, and look forward to working with the Department of Land and Natural Resources as the island of Kauai moves towards developing greater independent power sources.

If you have any questions, please call me at 586-0186.

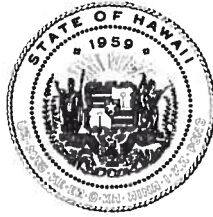
Sincerely,

James J. Nakatani  
Executive Director

c: David Bissell  
Jason Hines  
Dawn Huff

**EXHIBIT "C"**

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

November 14, 2014

**WILLIAM J. AHA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**JESSE K. SOUKI**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**EXEMPTION NOTIFICATION**

Regarding the preparation of an Environmental Assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR.

**Project Title:** Issuance of Right-of-Entry to Kauai Island Utility Cooperative (KIUC) for Site Assessment Purposes for West Kauai Storage Project, Tax Map Keys (4) 1-4-001:002, 1-4-001:014 and 1-2-001:006.

**Project Location:** Waimea, Kauai

**Project Description:** A right-of-entry permit is proposed for KIUC to undertake any site investigation, which may include, but not be limited to, evaluating the Puu Lua Reservoir, its condition, and the surrounding lands; and inspecting and surveying State lands along a corridor through State conservation lands from the Puu Lua Reservoir to the seaward Kekaha flat lands.

**Chapter 343 Trigger:** Use of State Land

**Exemption Class No.:** In accordance with Hawaii Administrative Rules Sections 11-200-8(a)(1), (4) and (5), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing"; Exemption Class No. 4 that states "Minor alterations in the conditions of land, water, or vegetation"; and Exemption Class No. 5 that states "Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource".

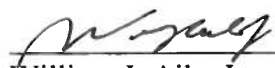
The Right-of-Entry will allow KIUC to conduct geo-tech fieldwork including test pits, soil sampling and borings. KIUC (or its contractors) shall be responsible for restoring all sampling areas and no hazardous materials will be used. KIUC asserts that the studies

November 14, 2014

will be non-invasive and will include archaeological and cultural resource surveys, flora and fauna surveys, and any additional surveys that may be required if endangered species are identified in the Project footprint.

Consulted Parties: Office of Conservation and Coastal Lands

Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
\_\_\_\_\_  
William J. Aila, Jr.  
Chairperson